

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION**

**FELECIA BRYANT**

**PLAINTIFF**

**V.**

**NO. 3:99CV109-P-A**

**HARDEES FOOD SYSTEMS, INC., AND  
JANE DOE AND MANAGERS OF HARDEES  
JOINTLY AND SEVERALLY**

**DEFENDANTS**

**MEMORANDUM OPINION**

This cause is presently before the Court on the plaintiff's motion to remand. Upon due consideration of the plaintiff's motion, the defendants' response thereto, and the memoranda submitted to this Court by both parties, the Court is prepared to rule. The Court finds as follows, to-wit:

**FACTUAL BACKGROUND**

On August 4, 1999, plaintiff Felecia Bryant initiated this action against defendants in the Circuit Court of Pontotoc County, Mississippi. The defendants were identified as Hardees Food Systems, Inc., Jane Doe, and the managers of Hardees. According to her complaint, the plaintiff attempted to place an order at the drive-thru window at the Hardees restaurant in Pontotoc, Mississippi, on July 30, 1999. An employee of Hardees, without any justification or provocation, then went outside of the restaurant and assaulted Bryant. Bryant sustained severe injuries from the attack, including a broken nose, neck and disc injuries, and dental damage.

At the time the complaint was filed, Bryant did not know the name of the Hardees employee who attacked her. However, her complaint does state that "the Defendant, Jane Doe, [was an] employee or agent of Defendant, Hardees Food Systems, Inc., whose true and legal name is unknown at this time to Plaintiff, but which Plaintiff reserves the right to affix as an

amendment to this Complaint.” Complaint at ¶V. The complaint goes on to allege that Jane Doe, “while acting in the course and scope of said employment, without justification, did intentionally and maliciously assault and batter said Plaintiff, Felecia Bryant.” Id.

Defendant Hardees removed this case to this Court on September 7, 1999. According to Hardees, this Court has jurisdiction of the matter because the citizenship of the named parties, Bryant and Hardees Food Systems, are diverse within the meaning of 28 U.S.C. §1332 and 28 U.S.C. §1441.<sup>1</sup> Furthermore, since the complaint requests \$10,250,000 in damages, the requirement that the amount in controversy exceed \$75,000 has been met.

On September 20, 1999, the plaintiff filed a motion to remand back to the Circuit Court of Pontotoc County, Mississippi. The motion states that Defendant Jane Doe can now be correctly identified as Catherine Holsey, a Mississippi resident. However, the plaintiff does admit that the names of the managers of Hardees are still not known.<sup>2</sup> The plaintiff claims that this matter should be remanded to the Circuit Court of Pontotoc County, Mississippi, because Catherine Holsey is a Mississippi resident who destroys the complete diversity requirement of 28 U.S.C. §1332.

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<sup>1</sup>Bryant is a Mississippi resident, and Hardees Food Systems, Inc., is a corporation that is organized under the laws of North Carolina, having its principal place of business in Raleigh, North Carolina.

<sup>2</sup>The Court notes in Plaintiff’s Brief in Support of Motion to Remand that the style of the case named Hardees Food Systems, Inc., Catherine Holsey and managers of Hardees as the defendants in this case. The plaintiff has not filed a motion with this Court to amend her complaint to replace “Jane Doe” with “Catherine Holsey.” However, the Court relies on a case in a federal district court in Alabama which granted a motion to remand in similar circumstances; that is, when the fictitious defendant was identifiable to both the plaintiff and the defendant. The motion to remand was granted even though the plaintiffs in that case did not file a motion to amend their complaint to add the non-diverse defendant to the suit either in state or federal court. See Wright v. Sterling Investors Life Ins. Co., 747 F.Supp. 653, 655 (N.D.Ala. 1990).

## DISCUSSION

The Court is of the opinion that the case should indeed be remanded to state court. In so holding, the Court relies heavily on Tompkins v. Lowe's Home Center, Inc., 847 F.Supp 462 (E.D.La. 1994). In that case, David Tompkins was injured when a Lowe's employee knocked a steel pipe from a store shelf onto Tompkins' big toe. Tompkins filed suit in Louisiana state court, naming Lowe's and a fictitious employee and insurance company as defendants. Lowe's then removed to federal court based on diversity under 28 U.S.C. §1332(a) because Tompkins was a Louisiana resident and Lowe's was a citizen of North Carolina. After the case was removed, Tompkins named the unidentified store employee as Randy Prevost and amended the complaint to include him. Prevost was a Louisiana resident, so Tompkins filed a motion to remand since complete diversity did not exist. The district court granted the plaintiff's motion to remand. The court found that while the citizenship of defendants sued under fictitious names should generally be disregarded, the court should consider the citizenship of that fictitious defendant when "plaintiffs' allegations give a definite clue about the identity of a fictitious defendant by specifically referring to an individual who acted as a company's agent." Id. at 464.

The same situation exists in the case at bar. Hardees has been given a "definite clue" as to the identity of the fictitious Jane Doe. The complaint clearly alleges that Jane Doe was an agent or employee of Hardees, and that Jane Doe was working at Hardees on or about July 30, 1999. Hardees should have knowledge of the identity of employees who work on any said date. "It would be unfair to force the [plaintiff] from [her] state court forum by allowing [Hardees] to plead ignorance about the defendant-employees identity and citizenship when [Hardees] was in a position to know that information." See Brown v. Trans-South Financial Corporation, 897

F.Supp. 1398, 1401 (M.D.Ala. 1995). The plaintiff's complaint provides a description of Jane Doe in such a way that her identity cannot reasonably be questioned; therefore, the Court will consider the citizenship of this fictitious defendant. See Lacy v. ABC Ins. Co., 1995 WL 688786 at \*3 (E.D.La. Nov. 17, 1995).

#### CONCLUSION

Based on the foregoing, the Court concludes that complete diversity does not exist between the parties in this action. It is therefore ORDERED that the plaintiff's motion to remand is GRANTED and that this case be and hereby is REMANDED to the Circuit Court of Pontotoc County, Mississippi.

THIS, the \_\_\_\_\_ day of November, 1999.

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W. ALLEN PEPPER, JR.  
UNITED STATES DISTRICT JUDGE